

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff

Case No. 15-20652-1

vs.

HON. GEORGE CARAM STEEH

D-01, BILLY DARRELL ARNOLD,

Defendant.

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**FIFTH STIPULATED AMENDED SCHEDULING ORDER**

The unprecedented and exigent circumstances created by COVID-19 and related coronavirus health conditions have created a health emergency throughout the United States and numerous foreign countries. This has resulted in the parties being unable to complete certain tasks by the deadlines imposed pursuant to the April 6, 2021, Fourth Stipulated Amended Scheduling Order (ECF No. 1714, PgID.23427). As a result, the parties stipulate to extend the deadline for certain items described in the Fourth Stipulated Amended Scheduling Order, approximately 60 days from the deadlines imposed by that prior order. The parties acknowledge that the pandemic continues to effectively curtail their investigation of important matters, including the ability to conduct in-person interviews. Accordingly, the parties expect that further amendments of the Scheduling Order will be required because of the ongoing

COVID-19 crisis, including the dates set forth in paragraphs 36-38 for the final pretrial conference, plea cutoff, start of jury selection and trial.

Pursuant to the stipulation, the Court adopts the following amended schedule for Defendant Billy Arnold:

1. This order does not change the deadlines imposed in paragraphs 2-7 of the Second Stipulated Amended Scheduling Order (ECF No. 1673, PgID.23067).

2. The Government agrees to disclose all *Brady* material as soon as reasonably possible.

3. **August 16, 2021:** Deadline for the Defendant to provide notice of whether he intends to raise a claim of intellectual disability, to include any information due by September 20, 2021, if available.

4. **September 20, 2021:** Simultaneous exchange of experts either party intends to call at an *Atkins* hearing, experts' curriculum vitae, and tests either party intends to administer to the Defendant. In addition, defense counsel will provide a description of the tests, which have been administered to the Defendant by defense experts. Understanding the investigation is ongoing, either party may modify its list on notice, should either side determine based on the results of testing or investigation

that additional experts or testing are required.<sup>1</sup>

5. **October 4, 2021:** Deadline for Defendant to file any motion challenging the Notice of Intent, Special Findings and aggravating factors, and any motion raising an “as applied” challenge.

6. **October 4, 2021:** Deadline for Defendant to file any Notice required under Rule 12.2(a) and (b)(1). If Defendant files a Notice under Rule 12.2(a) and/or (b)(1), the parties will submit a supplemental scheduling order by August 9, 2021, setting deadlines for the exchange of experts and experts reports.

7. **October 11, 2021:** Deadline for Government to file Notice of Intent to offer evidence under Federal Rules of Evidence 404(b).

8. **October 18, 2021:** Deadline for filing motions regarding juror selection process.

9. **October 18, 2021:** Deadline for parties to exchange proposed Jury Questionnaires.

10. **October 18, 2021:** Deadline for Defendant’s objections regarding the

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<sup>1</sup> If the defendant chooses to raise this pretrial claim of intellectual disability, this does not waive his Fifth or Sixth Amendment protections, or his rights under Rule 12.2. Thus, no mental health information disclosed to the Government as part of a pretrial determination of intellectual disability, or the fruits of such information, may be used against Mr. Arnold unless and until he is found guilty, confirms an intent to offer expert evidence on a mental condition during a sentencing proceeding, see FRCP 12.2(c)(2), introduces expert mental health evidence at a capital sentencing proceeding, see FRCP 12.2(c)(4), and the court determines that such evidence constitutes proper rebuttal within the meaning of Rule 12.2 and the 5<sup>th</sup> and 6<sup>th</sup> Amendments. The Defendant therefore agrees that all discovery contemplated by this Order will be turned over to Government trial counsel of record and that firewall counsel is not necessary for the *Atkins*- related proceedings contemplated by this Order.

Government's proposed tests, scope of the interview of Defendant and procedures to be followed during testing related to intellectual disability.

11. **October 25, 2021:** Deadline for Government's response to Defendant's objections to proposed tests, scope of interview and procedures to be followed during testing related to intellectual disability.

12. **October 25, 2021:** Deadline for Government's response to any motions filed under paragraph 5.

13. **October 25, 2021:** Deadline for Defendant's response to Government's Notice of Intent under paragraph 7.

14. **November 1, 2021:** Deadline for parties to submit agreed upon Jury Questionnaire and each party's disputed questions to the Court. The Court will set a hearing if necessary, to decide the disputed questions.

15. **November 2, 2021:** Argument and/or hearing on Defendant's objections to proposed tests, scope of interview and procedures to be followed during testing related to intellectual disability.

16. **December 6, 2021:** Completion of Government's intellectual disability testing.

17. **December 13, 2021:** Deadline for parties to make disclosures regarding non-mental health experts under Fed. R. Crim. P. 16(a)(1)(G) and 16(b)(1)(C).

18. **December 20, 2021:** Deadline for parties to make disclosures regarding non-mental health experts in response to disclosures submitted under paragraph 28.

19. **January 3, 2022:** Simultaneous exchange of expert reports and materials relied upon by those experts with respect to the issue of intellectual disability, consistent with Rule 16(a)(1)(F)&(G) (Government disclosure) and Rule 16(b)(1)(B)&(C) (Defense disclosure), including all underlying raw data, names of witnesses spoken to by experts with respect to the claim of intellectual disability and records related to the claim of intellectual disability.

20. **January 3, 2022:** Deadline for parties to submit a joint statement, setting forth points of agreement and disagreement, regarding the nature and timing of disclosures pertaining to the penalty phase, including disclosures pursuant to Federal Rule of Criminal Procedure 12.2(b)(2) and 16.

21. **January 11, 2022:** Deadline for Defendant to file a motion based on an *Atkins* claim.

22. **January 24, 2022:** Deadline for Government's response to *Atkins* Motion.

23. **January 31, 2022:** Oral argument (if necessary) and rebuttal reports on *Atkins* motion (if necessary).

24. **February 7, 2022:** Any evidentiary hearing on *Atkins/Hall* claim begins.

25. **February 7, 2022:** Deadline for all other motions not otherwise

mentioned in this scheduled to be filed, including motions *in limine*.

26. **February 21, 2022:** Deadline for responses in opposition to motions filed under paragraph 25.

27. **February 28, 2022:** Deadline for replies in support of motions filed under paragraph 25.

28. **February 28, 2022:** Deadline for Government to file Notice of Intent to offer evidence under Federal Rules of Evidence 609 and 807.

29. **February 28, 2022:** Government's preliminary deadline to provide a production of identifying information for unindicted or unnamed co-conspirators involved in any murder or attempted murder in furtherance of the RICO conspiracy.

30. **March 14, 2022:** Deadline for Defendant's response to Government's Notice of Intent under paragraph 28.

31. **February 21, 2022:** Government's preliminary deadline to provide *Jencks/Giglio* information as to law enforcement witnesses.

32. **February 28, 2022:** Deadline for parties to submit proposed jury instructions, joint statement regarding the jury questionnaire, witness lists and exhibit lists.

33. **March 7, 2022:** Government's final deadline to provide a production of identifying information for unindicted or unnamed co-conspirators involved in

any murder or attempted murder in furtherance of the RICO conspiracy.

34. **March 7, 2022:** Government's final deadline to provide *Jencks/Giglio* information as to all witnesses.

35. **March 28, 2022:** Final pre-trial conference and plea cutoff date.

36. **April 4, 2022:** Jury trial begins with jury selection.

37. **May 16, 2022:** Opening statements and witness testimony begin.

IT IS SO STIPULATED.

SAIMA M. MOHSIN  
Acting United States Attorney

/s/ A. Tare Wigod  
A. Tare Wigod Assistant U.S.  
Attorney  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9191  
[Tare.wigod@usdoj.gov](mailto:Tare.wigod@usdoj.gov)

/s/Maria P. Mannarino(with consent)  
Maria P. Mannarino  
500 Griswold, Suite 2450  
Detroit, MI 48226  
(248) 761-7347  
[mmannarino@comcast.net](mailto:mmannarino@comcast.net)  
Counsel to D-1 Billy Arnold

/s/ Rajesh Prasad  
Rajesh Prasad  
Assistant United States Attorney 211  
W. Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-0821  
[rajesh.prasad@usdoj.gov](mailto:rajesh.prasad@usdoj.gov)

/s/ Eric K. Koselke (with consent)  
Eric K. Koselke  
320 N. Meridian Street,  
#506  
Indianapolis, IN 46204  
(317) 722-2591  
[ekoselke711@gmail.com](mailto:ekoselke711@gmail.com)  
Counsel to D-1 Billy Arnold

/s/ Mark Bilkovic

Mark Bilkovic  
Assistant United States Attorney 211  
W. Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9623  
[Mark.bilkovic@usdoj.gov](mailto:Mark.bilkovic@usdoj.gov)

/s/Richard M. Jasper Jr. (with consent)

Richard M. Jasper, Jr.  
Law Office of Richard  
Jasper 276 Fifth  
Avenue Suite 501 New  
York, NY 10001  
(212) 689-3858  
[ricjasp@aol.com](mailto:ricjasp@aol.com)  
Counsel to D-1 Billy Arnold

Date: June 10, 2021

**SO ORDERED.**

Dated: June 14, 2021

s/George Caram Steeh

GEORGE CARAM STEEH  
United States District Judge